

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

GLOBAL HORIZONS, INC., d/b/a Global
Horizons Manpower, Inc.; GREEN ACRE
FARMS, INC.; VALLEY FRUIT ORCHARDS,
LLC; and DOES 1-10 inclusive,

Defendants.

No.: CV-11-3045-EFS

PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

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2 **2. "CONFIDENTIAL" MATERIAL**

3 "Confidential" material shall include the following information
4 and any documents reflecting the following information: the
5 Claimants' business addresses, medical information and personal
6 information such as marital or familial information, and business and
7 social relationships. It also includes any information produced in
8 response to the EEOC's Request for Production No. 16, which may
9 include the Grower Defendants' financial statements, annual reports,
10 balance sheets, asset and liability statements, profit and loss
11 statements, loan documents, leases, property titles, property tax
12 statements, cancelled checks reflecting payment of property taxes
13 and/or lease payments, and/or tax returns.

14 "Confidential" material does not include Claimants' residential
15 address information; however, the parties may agree to limit the
16 disclosure of such information.
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19 **3. SCOPE**

20 The protections conferred by this agreement cover not only
21 confidential material (as defined above), but also (1) any information
22 copied or extracted from confidential material; (2) all copies,
23 excerpts, summaries, or compilations of confidential material; and (3)
24 any testimony, conversations, or presentations by parties or their
25 counsel that might reveal confidential material. However, the
26 protections conferred by this agreement do not cover information that
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1 is in the public domain or becomes part of the public domain through
2 trial or otherwise.

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4 **4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

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6 **4.1 Basic Principles.** A receiving party may use confidential
7 material that is disclosed or produced by another party or by a non-
8 party in connection with this case only for prosecuting, defending, or
9 attempting to settle this litigation. Confidential material may be
10 disclosed only to the categories of persons and under the conditions
11 described in this agreement. Confidential material must be stored and
12 maintained by a receiving party at a location and in a secure manner
13 that ensures that access is limited to the persons authorized under
14 this agreement.
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16 **4.2 Disclosure of "CONFIDENTIAL" Information or Items that do not**
17 **include Confidential Addresses.** Unless otherwise ordered by the court
18 or permitted in writing by the designating party, a receiving party
19 may disclose any confidential material, excluding confidential
20 addresses, only to:
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22 (a) the receiving party's counsel of record in this action, as
23 well as employees of counsel to whom it is reasonably necessary
24 to disclose the information for this litigation;

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26 (b) the following officers, directors, and employees of the
27 receiving party upon the signing of the "Acknowledgment and
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1 Agreement to Be Found" (Exhibit A), unless the Parties agree
2 that a particular document or material produced is for
3 Attorney's Eyes Only and is so designated

4 (i) Jim Morford (Co-owner and Vice President of Green
5 Acre Farms) as the corporate representative for Green Acre
6 Farms, Inc.;

7 (ii) Mike Van Pelt (Orchard Manager at Green Acre Farms);

8 (iii) Kevin Boyle (Green Acre Farms Controller);

9 (iv) John Verbrugge (ownership interest) as the corporate
10 representative for Valley Fruit Orchards, LLC;

11 (v) Peter Verbrugge (ownership interest) as the corporate
12 representative for Valley Fruit Orchards;

13 (vi) Jackie Gustin (Controller, Valley Fruit Orchards);
14 and

15 (vii) Chris Peters (Valley Fruit Orchards Manager);

16 (c) experts, investigators, and consultants to whom disclosure
17 is reasonably necessary for this litigation and who have signed
18 the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

19 (d) the court, court personnel, and court reporters and their
20 staff;

21 (e) copy or imaging services retained by counsel to assist in
22 the duplication of confidential material, provided that counsel
23 for the party retaining the copy or imaging service instructs
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1 the service not to disclose any confidential material to third
2 parties and to immediately return all originals and copies of
3 any confidential material;

4 (f) during their depositions, witnesses in the action to whom
5 disclosure is reasonably necessary and who have signed the
6 "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless
7 otherwise agreed by the designating party or ordered by the
8 court. Pages of transcribed deposition testimony or exhibits to
9 depositions that reveal confidential material must be separately
10 bound by the court reporter and may not be disclosed to anyone
11 except as permitted under this agreement; and
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13 (g) the author or recipient of a document containing the
14 information or a custodian or other person who otherwise
15 possessed or knew the information.
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19 **4.3 Filing Confidential Material.** Before filing confidential
20 material or discussing or referencing such material in court filings,
21 the filing party shall confer with the designating party to determine
22 whether the designating party will remove the confidential
23 designation, whether the document can be redacted, or whether a motion
24 to seal or stipulation and proposed order is warranted.
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27 **5. DESIGNATING PROTECTED MATERIAL**
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1 **5.1 Exercise of Restraint and Care in Designating Material for**
2 **Protection.** Each party or non-party that designates information or
3 items for protection under this agreement must take care to limit any
4 such designation to specific material that qualifies under the
5 appropriate standards. The designating party must designate for
6 protection only those parts of material, documents, items, or oral or
7 written communications that qualify, so that other portions of the
8 material, documents, items, or communications for which protection is
9 not warranted are not swept unjustifiably within the ambit of this
10 agreement. Mass, indiscriminate, or routinized designations are
11 prohibited. Designations that are shown to be clearly unjustified or
12 that have been made for an improper purpose (*e.g.*, to unnecessarily
13 encumber or delay the case development process or to impose
14 unnecessary expenses and burdens on other parties) expose the
15 designating party to sanctions.
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19 If it comes to a designating party's attention that information
20 or items that it designated for protection do not qualify for
21 protection, the designating party must promptly notify all other
22 parties that it is withdrawing the mistaken designation.
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25 **5.2 Manner and Timing of Designations.** Except as otherwise provided
26 in this agreement (see, *e.g.*, second paragraph of section 5.2(a)
27 below), or as otherwise stipulated or ordered, disclosure or discovery
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1 material that qualifies for protection under this agreement must be
2 clearly so designated before or when the material is disclosed or
3 produced.

4 (a) Information in documentary form: (e.g., paper or electronic
5 documents and deposition exhibits, but excluding transcripts of
6 depositions or other pretrial or trial proceedings), the
7 designating party must affix the word "CONFIDENTIAL" to each
8 page that contains confidential material. If only a portion or
9 portions of the material on a page qualifies for protection, the
10 producing party also must clearly identify the protected
11 portion(s) (e.g., by making appropriate markings in the
12 margins).

15 (b) Testimony given in deposition or in other pretrial or trial
16 proceedings: the parties must identify on the record, during the
17 deposition, hearing, or other proceeding, all protected
18 testimony, without prejudice to their right to so designate
19 other testimony after reviewing the transcript. Any party or
20 non-party may, within fifteen days after receiving a deposition
21 transcript, designate portions of the transcript, or exhibits
22 thereto, as confidential.

25 (c) Other tangible items: the producing party must affix in a
26 prominent place on the exterior of the container or containers
27 in which the information or item is stored the word
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1 "CONFIDENTIAL." If only a portion or portions of the information
2 or item warrant protection, the producing party, to the extent
3 practicable, shall identify the protected portion(s).
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6 **5.3 Inadvertent Failures to Designate.** If timely corrected, an
7 inadvertent failure to designate qualified information or items does
8 not, standing alone, waive the designating party's right to secure
9 protection under this agreement for such material. Upon timely
10 correction of a designation, the receiving party must make reasonable
11 efforts to ensure that the material is treated in accordance with the
12 provisions of this agreement.
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15 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

16 **6.1 Timing of Challenges.** Any party or non-party may challenge a
17 designation of confidentiality at any time. Unless a prompt challenge
18 to a designating party's confidentiality designation is necessary to
19 avoid foreseeable, substantial unfairness, unnecessary economic
20 burdens, or a significant disruption or delay of the litigation, a
21 party does not waive its right to challenge a confidentiality
22 designation by electing not to mount a challenge promptly after the
23 original designation is disclosed.
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1 6.2 **Meet and Confer.** The parties must make every attempt to resolve
2 any dispute regarding confidential designations without court
3 involvement. Any motion regarding confidential designations or for a
4 protective order must include a certification, in the motion or in a
5 declaration or affidavit, that the movant has engaged in a good faith
6 meet and confer conference with other affected parties in an effort to
7 resolve the dispute without court action. The certification must list
8 the date, manner, and participants to the conference. A good faith
9 effort to confer requires a face-to-face meeting or a telephone
10 conference.
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14 6.3 **Judicial Intervention.** If the parties cannot resolve a challenge
15 without court intervention, the designating party may file and serve a
16 motion to retain confidentiality. The burden of persuasion in any such
17 motion shall be on the designating party. Frivolous challenges, and
18 those made for an improper purpose (e.g., to harass or impose
19 unnecessary expenses and burdens on other parties) expose the
20 challenging party to sanctions. All parties shall continue to maintain
21 the material in question as confidential until the court rules on the
22 challenge.
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26 7. **PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**
27 **LITIGATION**
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1 If a party is served with a subpoena or a court order issued in
2 other litigation that compels disclosure of any information or items
3 designated in this action as "CONFIDENTIAL," or "Confidential
4 addresses" that party must:

5 (a) promptly notify the designating party in writing and include
6 a copy of the subpoena or court order;

7 (b) promptly notify in writing the party who caused the subpoena
8 or order to issue in the other litigation that some or all of
9 the material covered by the subpoena or order is subject to this
10 agreement. Such notification shall include a copy of this
11 agreement; and
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13 (c) cooperate with respect to all reasonable procedures sought
14 to be pursued by the designating party whose confidential
15 material may be affected.
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19 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

20 If a receiving party learns that, by inadvertence or otherwise,
21 it has disclosed confidential material to any person or in any
22 circumstance not authorized under this agreement, the receiving party
23 must immediately (a) notify in writing the designating party of the
24 unauthorized disclosures, (b) use its best efforts to retrieve all
25 unauthorized copies of the protected material, (c) inform the person
26 or persons to whom unauthorized disclosures were made of all the terms
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1 of this agreement, and (d) request that such person or persons execute
2 the "Acknowledgment and Agreement to Be Bound" that is attached hereto
3 as Exhibit A.
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6 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**
7 **MATERIAL**

8 When a producing party gives notice to receiving parties that
9 certain inadvertently produced material is subject to a claim of
10 privilege or other protection, the obligations of the receiving
11 parties are those set forth in Federal Rule of Civil Procedure
12 26(b)(5)(B). This provision is not intended to modify whatever
13 procedure may be established in an e-discovery order or agreement that
14 provides for production without prior privilege review. Parties shall
15 confer on an appropriate non-waiver order under Fed. R. Evid. 502.
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19 **10. NON TERMINATION AND RETURN OF DOCUMENTS**

20 Within 60 days after the termination of this action, including
21 all appeals, each receiving party must return all confidential
22 material to the producing party, including all copies, extracts and
23 summaries thereof. Alternatively, the parties may agree upon
24 appropriate methods of destruction.
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26 Notwithstanding this provision, counsel are entitled to retain
27 one archival copy of all documents filed with the court, trial,
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1 deposition, and hearing transcripts, correspondence, deposition and
2 trial exhibits, expert reports, attorney work product, and consultant
3 and expert work product, even if such materials contain confidential
4 material. The confidentiality obligations imposed by this agreement
5 shall remain in effect until a designating party agrees otherwise in
6 writing or a court orders otherwise.
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9 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this
10 Order and provide copies to counsel.

11 **DATED** this 21st day of February 2013.
12

13 s/ Edward F. Shea
14 EDWARD F. SHEA
15 Senior United States District Judge
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [full name], of _____ [full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Eastern District of Washington on [date] in the case of EEOC v. Global Horizons, Inc., Green Acre Farms, Inc. and Valley Fruit Orchards, LLC, Case No. CV-11-3045-EFS.

I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Eastern District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City _____ and State _____ where sworn and signed:

Printed name: _____

Signature: _____